IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 21995 of 2007(R)

AGAINST THE ORDER IN IA.451/2007 IN OS.421/2004 of MUNSIFF COURT, OTTAPPALAM
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PETITIONER:

VESU AMMAL,
AGED 57 YEARS, W/O.MUNDATHODIYIL LATE LAKSHMANA GUPTHAN, PUNJAPADAM POST, THIRUVAZHIYODE VIA, OTTAPALAM TALUK.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

THEVAR, AGED 50 YEARS,
S/O.ALIKKAL VEETTIL KUTTAN MOOTHAN,
PUNJAPADAM POST, THIRUVAZHIYODE VIA,
OTTAPALAM TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 21995 OF 2007

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Dated this the 18th day of July, 2007.

J U D G M E N T

After perusing the order of the learned Munsiff and hearing the learned counsel for the writ petitioner I intend to dispose of this writ petition without notice to the other side. The suit is one for a permanent injunction filed against the defendant and the subject matter of dispute is regarding the boundary separating the plaintiff's property and defendant's property. The real dispute most probably is with respect to the trees standing on the boundary. So unlike in other cases for injunction where they are only concerned about possession, in a case where the dispute relates to the boundary, the documents may have relevance and the property may have to be fixed in accordance with the title deeds of the property. It is submitted in the application for remission of the Commissioner's report that there was level difference between the plaintiff's property and the defendant's property and both the properties lie in a separate

survey number and survey separating line will be the most crucial aspect in determining a case. The learned Munsiff thought that the Commissioner's plan and report was filed as early as in 2004 and the petition was filed only in November, 2007 and he was not very much inclined to allow the application for the reason that it was also in the list for trial. After perusing the documents I feel fairness can be done only by having a proper plan and report of properties of the plaintiff and defendant and the property be fixed in accordance with the title deeds of the respective parties. Therefore, the order under challenge is set aside. The Commissioner's plan and report are remitted back to the same Commissioner with a direction to identify the property with respect to the respective title deeds and in case of necessity with the assistance of Taluk Surveyor. Both the parties are permitted to file work memo before the

Commissioner. The expenses have to be met by the present writ petitioner for the time being and ultimately it will depend upon the result of the suit.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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